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April 13, 2001



**Via Hand Delivery**

Ms. Roberta D. Purcell
Assistant Administrator
Telecommunications Program
Rural Utilities Service
United States Department of Agriculture
1400 Independence Avenue, S.W.
Stop 1590, Room 4056-S
Washington, D.C. 20250-1560

**Re: Request for Public Comment on the Launching Our Communities' Access to Local Television Act of 2000, 66 Fed. Reg. 14, 880 (2001)**

Dear Bobbie:

Please find enclosed for filing an original and three (3) copies of the Initial Comments of Pegasus Communications Corporation in response to the Request for Public Comment described above. Also enclosed are two additional copies of this filing labeled "stamp-and-return"; please stamp the date and time on those copies for return by our messenger.

We appreciate the opportunity to provide these comments and thank you for your attention to this matter.

Sincerely,

Barrett K. Hawks/DS

Barrett K. Hawks
*Attorney for*
*Pegasus Communications Corporation*

Enclosures

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**UNITED STATES OF AMERICA**
**BEFORE THE**
**DEPARTMENT OF AGRICULTURE, RURAL UTILITIES SERVICE**

Request for Public Comment on Implementation of
the Launching Our Communities' Access to Local
Television Act, (Public Law 106-553)
66 Fed. Reg. 14,880 (2001)

# INITIAL COMMENTS
# OF
# PEGASUS COMMUNICATIONS CORPORATION

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TABLE OF CONTENTS

## INTRODUCTION

These comments are submitted on behalf of Pegasus Communications Corporation (together with all of its subsidiaries, "Pegasus"). Pegasus is an "interested party" as described in the notice of the Rural Utilities Service ("RUS") requesting public comment on the recently enacted Launching our Communities' Access to Local Television Act of 2000 (the "Act").[1] Pegasus is a potential applicant for a loan guarantee provided under the Act. As such, Pegasus is interested in offering its comments regarding the development of the regulations under the Act.

## ABOUT PEGASUS

### Pegasus – General

Pegasus' corporate mission is to bring advanced digital services to consumers in underserved areas. Pegasus is the only publicly-traded satellite television and internet services company primarily focused on providing services to rural and underserved areas of the United States. It is the largest independent distributor of DIRECTV®, with over 1.4 million subscribers at December 31, 2000 (about ten percent of the total number of direct broadcast satellite subscribers in the United States), and the third-largest direct broadcast satellite provider in the United States. It has the exclusive right to distribute DIRECTV digital broadcast satellite services to over 7.5 million rural households in 41 states and a retail network of over 3,500 independent retailers. As of December 31, 2000, Pegasus had $2.6 billion in assets and 979 full-time and 196 part-time employees. A copy of Pegasus' 1999 Annual Report has previously been provided to RUS.

### Pegasus Rural Focus and Strategy

Pegasus' long-term goal is to become an integrated provider of direct broadcast satellite and other digital satellite services for rural areas of the United States by continuing to grow its rural subscriber base through aggressively marketing DIRECTV, continuing to acquire other DIRECTV rural affiliates, continuing to develop the Pegasus retail network, and by generating future growth through bundling additional digital satellite services with its distribution of DIRECTV services.

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[1] 66 Fed. Reg. 14880-881 (2001)

Pegasus is the largest affiliate of the National Rural Telecommunications Cooperative ("NRTC"). NRTC contracted with DIRECTV prior to the launching of DIRECTV's programming service to offer NRTC members and affiliates the opportunity to acquire exclusive rights to distribute DIRECTV programming services in rural areas of the United States. Approximately 250 NRTC members and affiliates acquired such exclusive rights, thereby becoming DIRECTV rural affiliates.

When DIRECTV was launched in 1994, Pegasus was the largest of the original DIRECTV rural affiliates, with a DIRECTV exclusive territory of approximately 500,000 homes in four New England states. Beginning in October 1996, Pegasus acquired directly or indirectly exclusive distribution rights from approximately 165 DIRECTV rural affiliates. Today, Pegasus represents 80% of the DIRECTV exclusive territories held by DIRECTV's rural affiliates. There are less than 100 remaining rural affiliates with 325,000 subscribers in exclusive DIRECTV territories, representing approximately 2 million homes. Pegasus believes that consolidation among DIRECTV's rural affiliates will continue and that Pegasus has an advantage in acquiring additional DIRECTV rural affiliates.

**Satellite Services in Rural Areas**

Rural areas, which include approximately 85% of the total landmass of the continental United States, have an average home density of only approximately 11 homes per square mile. Because the cost of reaching a household by a cable or other wireline distribution system is generally inversely proportional to home density and the cost of providing satellite service is not, satellite services have strong cost advantages over cable and other wireline distribution systems in rural areas.

**Pegasus Local-to-Local Plans**

Because Pegasus' customers are located in rural areas, and because DIRECTV offers local television signals only in the largest television markets, local signals are not available to the great majority of Pegasus' DIRECTV customers. Pegasus is currently planning technical options that are intended to give it the capability to offer local-to-local television service to most, or perhaps all, of its satellite television subscribers in unserved and underserved markets. Because of its previous success in introducing DBS services to rural and underserved areas, Pegasus believes that it will be well situated to introduce satellite-delivered local into local and low cost, residential broadband services to rural and underserved areas.

ANSWERS TO QUESTIONS POSED BY RURAL UTILITIES SERVICE

In this section, Pegasus has attempted to address in general terms the questions posed by RUS in the notice for public comment. Due to limited time available for comment, the uncertainty of the timing of the availability of loan guarantees under the Act and other pressing business matters, Pegasus has been unable to devote its resources to the development of comprehensive answers to the questions posed by RUS. However, Pegasus would welcome the opportunity for further discussions with RUS on implementation of the Act and the ability to provide additional information to RUS in the future, particularly as the timing of any appropriation becomes more clear.

**Responses Related to Understanding Industry Trends and Issues**

While the Act requires technological neutrality, its implementation must favor those projects which provide the highest quality service at the lowest cost per household[2]. Currently three technologies have the capability of delivering local television signals to nonserved and underserved markets – broadband terrestrial wireless means, broadband wireline means (coaxial cable, fiber optic cable, or hybrid fiber/coaxial cable) or satellite. No single method of delivery is inherently superior; each has certain advantages and disadvantages that make it better or worse in different circumstances. For the reasons described below, Pegasus believes satellite technology best meets the objectives of the Act.

**Terrestrial wireless**

*Over the air broadcast*. The native transmission path for local television stations is the most obvious. The advantages include no marginal cost of spectrum or delivery, and this system is widely available in urban areas. Disadvantages include uneven, unpredictable, and spotty coverage and poor coverage in rural areas. In many cases it requires installation of an intrusive outdoor receiving antenna that must be rotated to receive different stations. Some consumers can receive some stations over the air reliably, but not others. Coverage is generally limited to 30-50 miles from the station's transmitting antenna, leaving vast geographic areas unserved, so-called "white areas". Over the air broadcast stations can extend their coverage into rural areas through the use of low power repeaters and translators. However, these are expensive to build, maintain, and operate, and the economics of advertiser - supported television generally preclude

[2] Section 1004(e)(1)(A)

such elaborate infrastructure. Moreover, in most areas no spectrum is available for repeaters and translators.

*MMDS and MVDDS.* Local broadcast stations may also be provided by other terrestrial wireless means. Typically, the local television stations are collected by the terrestrial wireless provider, converted to a much higher frequency band, packaged with subscription video services, and sold directly to consumers. These technologies require the installation of multiple transmission sites to cover large geographic areas, and customers generally must have a clear line of sight to the transmitting tower. Zoning restrictions, complexity of collecting programming at various sites, and other practical issues complicate efforts to provide widespread coverage, and terrain shielding, buildings, foliage, and consumers' own homes often prevent line of site access to the transmitter. As a result terrestrial wireless means have had very limited success in urban areas and virtually no success in rural areas. Where available, the advantage of MMDS (or MVDDS, when ultimately deployed) is principally the ability to receive reliable, high quality service wirelessly through a single antenna that does not need to be repointed depending on the channel being watched. The disadvantages are as noted above: spotty coverage, logistical issues with implementation and line of sight limitations on serviceable households.

MMDS spectrum is widely allocated and MMDS systems are widely deployed in urban areas. Line of sight and other issues have limited the success of MMDS and many MMDS licensees have sold their licenses to data carriers, which are converting the facilities to wireless data uses. The small geographic coverage area, signal collection and processing complexity, and other inherent features make high frequency, line of sight wireless means unsuitable for sparsely populated areas. Although there may be practical alternatives for certain small communities, it is impractical, if not impossible, to achieve widespread rural coverage through terrestrial wireless means. Advantages include scalable deployment (although capital cost per household covered can be quite high, it is possible to address a small number of targeted households) and ability to provide a complete suite of multichannel services in addition to local signals. Disadvantages, as noted above, include relatively high cost per household, cost per household inversely proportional to household density (making this a progressively more expensive solution as population density falls) and lack of ubiquity even within coverage area, resulting from line of sight limitations.

**Terrestrial Wireline (cable)**

Terrestrial wireline, or cable services, are available to a smaller percentage of households in rural "C and D" counties, than in urban "A and B" counties. Cable television is an excellent technology for delivery of local television signals to areas where household density is relatively high. However, in areas of lower household density, high fixed capital costs and high plant maintenance costs have prevented cable systems from reaching lowest density areas. The same issues – extremely high capital cost per home served in small towns and rural areas – have kept the vast majority of rural cable systems from upgrading to digital facilities and will prevent the introduction of high definition and other advanced television services. Though technically capable of providing service in rural areas, practical financial considerations – including disproportionately high upfront capital costs and extremely high ongoing operational costs per home passed in low density areas -- militate against cable extending its reach into unserved areas. In more remote areas, particularly of the western US and northern plains, cable systems face difficulty and increased costs in receiving local television signals.

**Satellite**

Satellites can provide ubiquitous coverage to every household with electricity and a view of the southern sky, and as such are ideal for providing service to even the most remote communities and households. A single satellite optimized for the purpose can provide local television service to the vast majority of rural households in the continental US. Though the initial cost of launching such a satellite and providing associated ground services can appear high, the cost per household passed is a small fraction of any other method and ongoing operational expenses are relatively modest. Moreover, no additional infrastructure, other than the receiving equipment, is required as more and more consumers take advantage of the service.

Current technology requires that each local television station to be broadcast via satellite must be "backhauled" to a satellite uplink center, where it is processed and combined with other signals before being transmitted to consumers. This represents a substantial portion of the operational costs of providing local television signals. Pegasus believes that advanced, next stage satellite platforms can not only provide the bandwidth necessary to retransmit local signals into unserved areas, but can reduce or eliminate the substantial ongoing expense of "backhauling" local signals to a single uplink site. This, in turn, will enable the satellite service provider to extend its reach into markets that otherwise cannot be served economically.

The US currently holds rights from the ITU to access more than twenty satellite orbital slots in the untapped Ka band, each of which is capable of providing all local signals in the US. A single consumer receiving antenna can be designed to receive current DBS signals, Ka band local television signals, and to provide DSL-like broadband access via Ka band.

**Responses Related to the Development of Regulations Implementing the Act**

Pegasus believes that in developing recommendations to the Loan Board, RUS should keep in mind the ultimate objective of the Act and develop a structure for the loan guarantee program which best fulfills the purposes of the Act. The primary objective of the Act is, of course, to facilitate access to signals of local television stations for households located in nonserved and underserved areas.[3] Congress mandated an 80% loan guarantee to private sector lenders,[4] a separate Loan Board, the development of new underwriting criteria through a public-private sector partnership, a requirement that the loan terms be consistent with similar obligations in the private capital market[5] and other features of this loan program quite different from any other existing loan guarantee program of the United States.[6] These different features of the Act should be kept foremost in mind by RUS, the Loan Board and other government agencies in developing this program.

While the Act gives RUS the primary responsibility for preparing regulations and administering the program, RUS' role in the program will differ from the role it plays in the rural electric and rural telephone programs. The Act gives ultimate responsibility to the Loan Board for approval of the regulations and for the decision to issue a loan guarantee. Nevertheless, as the agency responsible for taking the lead in preparing regulations, RUS will play a significant role in developing the substantive content of the regulations.

The nature of the program differs in significant respects from the rural electric and telephone programs. The Act rejects a preference for particular kinds of borrowers, based on the nature of their organizations, and instead sets up a competition among borrowers whose proposals best meet the purposes of the Act. In addition, unlike the basic technology of delivery of electric power and basic landline telephone service, which has changed relatively little since the inception of the electric and telephone programs, the technology in the telecommunications

[3] Section 1002
[4] Section 1004(d)(2)(D)(i)(I)
[5] Section 1004(d)(2)(D)(iv)
[6] Sections 1003(c)(1). Preserving competition is also a goal under the Act. Section 1004(d)(2)(C)

industry is undergoing rapid change as new internet, cable and wireless technologies are discovered and perfected for commercial use in a short period of time.

These differences lead to the need for development of a loan guarantee program that differs substantially from the existing rural electric and telephone programs. Two factors require a program that allows for a relatively short time period between the application for a loan guarantee and initial funding of the loan. The Act requires that loan guarantees be made prior to December 31, 2006. When appropriations are made, the Board will need to act quickly to put regulations in place and then to process applications. Additionally, the potential borrowers who are best positioned to launch cost-effective local programming services in the broadest scope of nonserved and underserved areas will likely be existing companies like Pegasus looking for opportunities to invest their financial and other resources in valuable business efforts. If obtaining a guaranteed loan under the program involves a loan approval process that takes longer than a few months, most, if not all, of such potential borrowers may choose to forego the opportunity presented by expanding service into nonserved or underserved areas and invest their capital and other resources in upgrading or expanding their existing services or developing new technologies to enhance existing services. Contrary to the purposes of the Act, this would serve only to widen the so-called "digital divide".

The Act requires that to the maximum extent practicable, the Board must give priority to approval of loan guarantees for projects first, that serve nonserved areas and second, that serve underserved areas. As stated above, priority is to be given to projects that provide the highest quality service at the lowest cost per household. The Board is also to give consideration to projects that (a) provide high-speed internet service, (b) would, if possible, offer a separate, lower priced, "local-only" tier of service or (c) provide local broadcast signals by a means reasonably compatible with existing systems or devices predominantly in use.

These provisions of the Act appear to require an application system that is not administered on a first in time, first in right basis but one which favors applications that best serve the purposes of the Act. Consideration will need to be given to creation of a series of application deadlines and some period of time during which applications are accepted and their relative merits are compared based on the Act's mandatory and preference criteria. Nevertheless, in order not to discourage the potential borrowers who have the ability to maximize the scope of the delivery of local broadcast signals in nonserved and underserved

areas, the time periods for comparison of applications must be relatively short – no more than a few weeks for a determination of which applications delivered by the same deadline will be accepted (subject to completion of the appropriate documentation and security arrangements). In addition, there should also be frequent publication of the number and loan guarantee amounts of all approved and pending applications, so that potential applicants can determine the amount of loan guarantees that remain available.

Pegasus also encourages RUS to begin developing NEPA regulations for this program. The environmental impacts of most activities that will be funded with loans guaranteed under this program are minimal. In many instances, the required installation of technological infrastructure should be subject to categorical exclusions from NEPA requirements. Pegasus will welcome the opportunity to comment more broadly on the development of NEPA regulations for this program.

Given other provisions of federal law applicable to recipients of loan guarantees from the federal government, the loan administration requirements on borrowers, including operational limitations, will be more burdensome than with typical commercial loans. However, to the extent that additional burdens associated with the loan guarantee program can be minimized, the more likely it will be that the most financially and operationally capable telecommunications companies will choose to develop business plans for expanding local broadcast service into nonserved and underserved areas.

For example, there should be no need for the Board to develop detailed engineering requirements like those developed by RUS in its existing programs. The government should look to the quality and experience of applicants and the requirements of commercial lenders to assure technological feasibility in keeping with the requirements of the Act.[7] Likewise, guidelines used by commercial lenders experienced in lending to entities in the business of providing television broadcast and cable signals services for operational controls, maintenance of certain financial ratios and other loan terms provide the appropriate benchmarks for the federal government loan guarantees. To the extent that underwriting criteria and operational controls for the loan guarantees match those of experienced commercial lenders, potential applicants will be inclined to evaluate the opportunities presented by expanding local broadcast signal service in nonserved and underserved areas on an equal basis with other business opportunities.

[7] Section 1004(d)(2)(D)(iv)

The requirements of the Act with respect to security for the loan guarantees and for the loan will also need to be given careful consideration. A flexible interpretation of the Act's security requirements will enhance the attractiveness of the program to the more creditworthy borrowers.

In several instances the Act requires liens on assets. A broad reading of this requirement to include all kinds of intangible property would be consistent with the reality of the television broadcast and cable businesses. In many instances, borrowers will lease capacity, rather than purchasing such assets outright. The collateral requirements of experienced commercial lenders should provide useful guidelines for the security requirements for the government guarantee.

When developing the underwriting criteria, the Loan Board will need to consider limitations imposed by the existing capital structures of potential borrowers. Like other potential borrowers under the program, Pegasus has a substantial existing business with widespread interests and a complex capital structure. Thus, any new loan to Pegasus could be feasible only if it could be made in compliance with the terms of Pegasus' existing indebtedness. Therefore, Pegasus believes that RUS and the Loan Board should develop flexible security and underwriting criteria to meet the needs of today's capital markets.

While some of the provisions in the Act regarding affiliates of borrowers are stated in mandatory language, a careful reading of the Act and the legislative history indicates that affiliate involvement is not mandatory. If the Act is not properly interpreted, the affiliate provisions would discourage large corporate entities with numerous related subsidiaries from participating in the program. Clearly, Congress was concerned that borrowers not be allowed to circumvent the requirements of the Act through the use of affiliates, but it also evidenced in several instances an understanding that any hard and fast rule regarding affiliates would be unwise.

The Act requires that "[c]ollateral . . . shall consist solely of assets of the applicant, any affiliate of the applicant, or both (*whichever the Board considers appropriate*) . . . ." (Emphasis added.)[8] It also requires that affiliates provide collateral only when "the value of collateral provided by an applicant is [not] at least equal to the unpaid balance of the loan amount covered by the loan guarantee."[9] The Report of the Senate Committee on Banking, Housing and Urban

[8] Section 1005(b)(2)(B)
[9] Section 1004(d)(3)(B)(iii)

Affairs indicates that *if* the collateral provided by an applicant is insufficient to protect the taxpayers, then collateral of an affiliate should be required.[10] RUS is specifically directed to issue regulations to "set forth the *circumstances* [obviously intending not all] in which an applicant, together with any affiliate of an applicant, shall be treated as an applicant . . . ."[11] (Emphasis added.) Finally, the Act provides that the Board is not *prohibited* from requiring" . . . under circumstances considered appropriate by the Board, that affiliates of an applicant be subject to certain obligations of the applicant . . . ."[12] (Emphasis added.) Thus, the provisions allowing for inclusion of affiliates in the credit package for a loan guarantee applicant are discretionary to the Loan Board. To the extent an applicant has sufficient credit strength and collateral to support the loan guarantee on its own, restrictions on the applicant resulting from the guarantee should not apply to its affiliates.

Likewise, the affiliate indemnification requirements of the Act are not intended to be mandatory in all situations.[13] These provisions should also be read in context with the other provisions in the Act relating to affiliates. When an affiliate is included in an applicant's credit package, then the affiliate should be subject to the indemnification provisions. An affiliate which is not part of the credit package should not be subject to such indemnification provisions.

Finally, another provision of the Act which must be carefully interpreted is the requirement that the Loan Board find that the loan would not be available on reasonable terms and conditions without the guarantee. The legislative history indicates that this provision is based on a congressional finding that local-to-local television service in nonserved and underserved areas is uneconomical in today's private market.[14] As Congressman Markey of Massachusetts remarked during the House debate on the Act,

> [T]his bill does not require some of the largest corporations in America to actually first have gone into the financial marketplace and established that they cannot obtain these loans from a commercial financial institutions.

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[10] S. Rep. No. 106-243, at page 6 (2000)
[11] Section 1004(b)(2)(d)
[12] Section 1004(b)(3)
[13] Section 1005 (o)(1)
[14] S. Rep. No. 106-243, at page 3 (2000)

Instead, what it does is it assumes that they cannot receive them.[15]

Thus, this provision does not require the Loan Board to approve guarantees only for those companies whose credit is too weak to otherwise get a private loan without federal support. Indeed, to interpret the Act to require that applicants have been rejected for commercial loans would conflict with another of the main purposes of many provisions of the Act--the protection of taxpayers from loss.[16]

## CONCLUSION

As its comments indicate, Pegasus believes that direct broadcast satellite and other digital satellite services will continue to achieve disproportionately greater consumer acceptance in rural and underserved areas than in metropolitan areas. No other method of delivery approaches satellite for efficiency (cost per home passed), percentage of homes served in covered markets, and absolute number of covered households. Accordingly, Pegasus intends to continue focusing on delivering advanced digital services to these areas. Penetration of direct broadcast satellite services is 24% in rural areas, compared to 9% in metropolitan areas. In 1997 Pegasus applied for Ka band spot beam satellite licenses that would be ideal for highly efficient delivery of local television signals by satellite, and Pegasus is finalizing designs that will support the broad provisioning of local broadcast signals by satellite.

Pegasus planning assumes that it will ultimately carry all local broadcast signals in each market served. Pegasus believes that consumers should be able to choose from the full array of local programming options that broadcast stations make available.

Pegasus appreciates the opportunity to provide these comments. Because of the purpose of the Act and its unique provisions, new concepts will be required for its implementation that are not found in other government loan programs. Because it is difficult to foresee at this point in detail what those concepts should be, Pegasus would like the opportunity to provide additional input when RUS is able to devote additional attention to the development of this program. Pegasus therefore suggests that RUS invite additional comments as soon as an appropriation to implement the Act is made or at any earlier time when RUS moves forward with its process.

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[15] 378 Congressional Record H2298 (daily ed. April 13, 2000)
[16] 289 Congressional Record S1930 (daily ed. March 30, 2000)

Respectfully submitted on behalf of Pegasus Communications Corporation this 13th day of April 2001.

Barrett K. Hawks/EJ

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